

REMARKS

Claims 24-34, 40-44, 46-53, 55, and 62-67 are currently pending in the present application. No claims are currently canceled or added.

Applicants acknowledge and appreciate the indication of allowance for claims 27, 28, 30 and 63 if rewritten in independent form.

Reconsideration of this application in light of the following remarks is requested.

Election/Restriction

The Office Action asserted that newly submitted claims 55 and 64 are directed to an invention that is independent or distinct from the invention originally claimed. Thus, the Office Action withdrew claims 55 and 64 as being directed to a non-elected invention. However, new claim 64 is directed towards the same invention as cancelled claim 54, a method of installing a vertebral implant. New claim 64 is intended to replace cancelled claim 54. Claim 55 depends from and further limits claim 64. Therefore, Applicants respectfully traverse the restriction requirement with respect to claims 55 and 64.

Rejections under 35 U.S.C. §102

Claims Rejected Under Schafer

Claims 24-26, 29, 31-34, 40-43, 46-53, 65, and 66 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application No. 2004/0172129 A1 to Schafer et al. ("Schafer").

The PTO provides in MPEP §2131 that

"[t]o anticipate a claim, the reference must teach every element of the claim...."

Therefore, to sustain the rejections with respect to claims 24, 40, 46, and 65 Schafer must contain all of the claimed elements of each claim.

However, with respect to claim 24 Schafer does not disclose "a basket comprising a tubular wall bounded by a base, the wall and base defining a cavity. . ." The Office Action pointed to the locking element 42 in Schafer as being the equivalent to the basket of claim 24.

As shown best in Fig. 9 of Schafer, while the locking element 42 includes a tubular wall, the tubular wall is not bounded by a base as required by claim 24. Therefore, the locking element 42 cannot teach the basket of claim 24.

Similarly, with respect to claim 40, Schafer does not disclose a base as required by claim 40, which includes “a sidewall circumscribing a base” and “an open end opposite the base.”

Again, with respect to claim 46, Schafer does not disclose “a graft containment device, comprising an open end and a perforated base plate opposite the open end. . .” because Schafer does not appear to disclose a base plate, let alone a perforated base plate.

Finally, with respect to claim 65, Schafer does not disclose “a tubular receptacle member sized to extend into the through bore, the tubular receptacle member bounded at one end by a perforated base to form a cavity adapted to receive graft material.” Again Schafer does not appear to disclose either a base plate or a perforated base plate.

Therefore, the §102(b) rejection of claims 24, 40, 46, and 65 are not supported by the Schafer reference. Claims 25, 26, 29, 31-34, 41-43, 47-53, and 66 depend from and further limit claims 24, 40, 46, and 65. Thus, Applicants respectfully request Examiner withdraw the rejections of claims 24-26, 29, 31-34, 40-43, 46-53, 65, and 66.

Claims Rejected Under Malone

Claims 40-44, 65, and 67 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application No. 2002/0169507 A1 to Malone (“Malone”).

To sustain the rejections with respect to claims 40 and 65 Malone must contain all of the claimed elements of each claim.

However, with respect to claim 40, Malone does not disclose “an engagement device for maintaining the graft containment device within the cavity of the corpectomy device.” Malone does not appear to disclose a graft containment device for use with a corpectomy device. Rather, Malone involves interbody spinal fusion cages. Thus, Malone fails to teach the elements of claim 40.

With respect to claim 65, Malone does not disclose “a first tubular implant member having a longitudinal axis extending substantially parallel to the spinal column.” Rather, the

longitudinal axis 30 in Malone extends substantially perpendicular to the spinal column, as shown in Fig. 1 of Malone.

Therefore, the §102(b) rejection of claims 40 and 65 is not supported by the Malone reference. Claims 41-44 and 67 depend from and further limit claims 40 and 65. Thus, Applicants respectfully request Examiner withdraw the rejections of claims 40-44, 65, and 67.

Claims Rejected Under Kojimoto

Claims 46-53 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,290,312 to Kojimoto et al. ("Kojimoto").

To sustain the rejection with respect to claim 46 Kojimoto must contain all of the claimed elements of claim 46. However, Kojimoto does not disclose "an expandable tubular assembly having a sidewall; and a graft containment device," as recited by claim 46. Rather, depending on how one characterizes the components of Kojimoto, the Kojimoto reference discloses either an expandable assembly and no graft containment device, or a graft containment device and no expandable assembly. That is, if component 18 is considered a graft containment device as asserted by the Office Action, then there cannot be an expandable tubular assembly because component 20 is not expandable. Similarly, if the two components 18, 20 are considered together to be an expandable assembly, then there cannot be a graft containment device. Thus, Kojimoto fails to teach all of the elements of claim 46.

Therefore, the §102(b) rejection of claims 46 is not supported by the Kojimoto reference. Claims 47-53 depend from and further limit claim 46. Thus, Applicants respectfully request Examiner withdraw the rejections of claims 46-53.

IV. Conclusion

It is clear from all of the foregoing that independent claims 24, 40, 46, 54, and 58 are in condition for allowance. Dependent claims 25-34, 41-44, 47-53, 55-57, and 59-61 depend from and further limit the independent claims and therefore are allowable as well. An early formal notice of allowance of claims 24-34 and 40-44, and 46-61 is requested.

Respectfully submitted,



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Dated: February 15, 2006
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R-127805.1

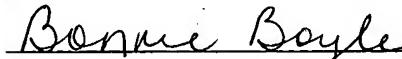
EXPRESS MAIL NO.: EV 622991975 US

DATE OF DEPOSIT: February 15, 2006

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